

Notice of Allowability

Application No.

09/761,981

Examiner

Peter J Vrettakos

Applicant(s)

SWANSON, DAVID K.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 10-20-04.
2. ☒ The allowed claim(s) is/are 1-9,28-34 and 37-59.
3. ☒ The drawings filed on 4-18-01 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

REASONS FOR ALLOWANCE

Claims 1-9, 28-34, and 37-59 are pending.

Claims 1, 9, 37, and 49 are independent.

The Office has considered the IDS submitted 11-26-04.

This application is a CIP of 09/652,099 08/30/2000 PAT 6,579,288.

The following is an examiner's statement of reasons for allowance: The Applicant has obviated the prior Double Patenting rejection involving claim 1 by pointing out the Terminal Disclaimer filed 6-3-03. As a result independent claim 1 and its dependent claims (2-8 and 28-34) are in condition for allowance.

The Office concedes that the fluid supply line (26) in LaFontaine is not supported on the exterior of the catheter tube (84) at the inlet to an expandable member (80). As a result independent claim 9 is in condition for allowance.

The Applicant argues that Lafontaine in view of Tu would not make obvious a surgical probe with, *inter alia*, a plurality of energy transmission devices. Lafontaine probe includes an expandable member (80) with a single electrode (89) depicted in figure 5. The Applicant further argues that Tu (which includes more than one electrode) does not mention/suggest placing the electrodes inside an expandable member/tissue cooling apparatus such as element 80 in Lafontaine. Therefore, one cannot deduce from the combination of patents that it would have been obvious to design more than one electrode inside the expandable member/tissue cooling apparatus in Lafontaine. Independent claims 37 and 49 each disclose a probe with a tissue cooling apparatus

positioned about a plurality of energy transmission devices. The Examiner concedes. As a result independent claims 37 and 49, as well as dependent claims 38-48 and 50-58, are in condition for allowance.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter J Vrettakos whose telephone number is 571-272-4775. The examiner can normally be reached on M-F 9-6.

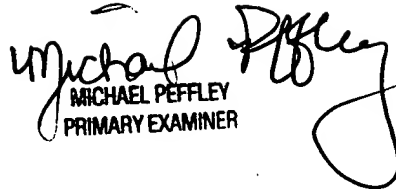
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Pete Vrettakos
January 5, 2005



MICHAEL PEFFLEY
PRIMARY EXAMINER